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- “(b) The answer is in the affirmative.
- “(c) The Government do not think so. The selling price of handloom cloth at present is high enough to absorb the difference in price between Indian and imported yarn and still leave a profit to the producer.
- “(d) No complaint has been received by the Government in this regard.
- “(e) The question does not arise.
- “(f) There is no such proposal before this Government. I may add for the information of the hon. Member that regulation of imports concerns the Central Government.”

[Note.—An asterisk (*) at the commencement of a speech indicates revision by Member.]

II.—DISCUSSION ON THE DRAFT CONSTITUTION OF INDIA.

* DR. SIR A. LAKSHMANASWAMI MUDALIYAR:—“Mr. President, on behalf of those sitting on this side, I suggest that the House may rise at 4-30 to-day as we have a function to attend. We are, however, quite ready to meet in the evening on Monday at about 5-30 and go on till about 8 o'clock and finish the discussion. I hope the arrangement will be convenient to many and you will allow us to do so.”

THE HON. DR. T. S. S. RAJAN:—“Mr. President, I have absolutely no objection. The other House will rise at 5 o'clock on Monday and at half past five, we can resume the discussion. I would like to make a personal request to the House to conclude the discussion on Monday at 8 o'clock at the latest because I have got to leave for New Delhi early next morning. I hope the House can certainly try to finish the discussion on that day.

“An alternative suggestion was in my mind. The Constituent Assembly is not going to meet till July and there may be nothing lost if you take the whole discussion at a later stage. The Assembly, however, in the meanwhile will discuss it for three days. There will be a big interval after that and if we begin later, things would have cooled down and would get stale. As a member of this House I would certainly like precedence in anything being given to this House and discussion proceeded with here as scheduled. Considered from all aspects Dr. Lakshmanaswami Mudaliyar's suggestion seems to be quite advantageous and acceptable. If the House accepts, I have no objection.”

SRI C. N. MUTHURANGA MUDALIYAR:—“Mr. President, I understood the Hon. the Leader of the House to say that everything would become stale if discussions are started first on this subject in the other House. Certainly as a House of Elders, I am sure, Sir, the House will bring several new facts to light, which the Assembly may not have done.”

MR. PRESIDENT:—“Does the hon. Member want to have the discussion on the 29th of this month or sometime later.”

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SRI C. N. MUTHURANGA MUDALIYAR :—“ Mr. President, the 29th of this month will be all right if hon. Members can wait till then. But, Sir, to keep the House sitting from 5 o'clock is always very inconvenient. If you, Sir, rule that the House should sit during nights, I have no alternative. In view of the convenience of hon. Members, my humble individual submission is that the discussion may take place after the Assembly finishes it and nothing will be lost by waiting for three days.”

MR. PRESIDENT :—“ I have absolutely no objection. But after all, I don't think the House will require more than five hours for the discussion. When it is possible to finish it on Monday, why not finish it and why must members wait for three days?

“ As regards meeting at 5 o'clock, I presume hon. Members would like discussions to take place in the cool hours of the evening rather than be broiling in the hot sun. I do not know why Mr. Muthuranga Mudaliyar does not want to come in the evening.”

THE HON. DR. T. S. S. RAJAN :—“ Mr. President, there is a tea party to-day in honour of the Hon. Mr. Shyama Prasad Mukherjee and many hon. Members have been invited and they are bound to attend. There is a dinner for him at 8 o'clock and in between the two there is very little time to rush back here, have a discussion and go back; it will be rather inconvenient. That is why I am prepared to accept Dr. Lakshmanaswami Mudaliyar's suggestion.”

SRI C. N. MUTHURANGA MUDALIYAR :—“ We will meet on 29th, if it will be acceptable.”

THE HON. DR. T. S. S. RAJAN :—“ The only difficulty is that I won't be here as well as the Hon. Premier. If you don't want us, you can carry on the discussion on that day.”

DR. V. K. JOHN :—“ We would request therefore that we may have the discussion on Monday as it will also be convenient to most members on this side.”

MR. PRESIDENT :—“ I believe it is the general desire of the House that we finish discussion to-day at 4-30 and resume at 5-30 on Monday till 8 or 8-30 p.m. that day.”

THE HON. DR. T. S. S. RAJAN :—“ I move—

‘ that the Draft of the new constitution of India as settled by the drafting committee appointed by the Resolution of the Constituent Assembly of August 29th 1947 be taken into consideration.

“ The motion seeks to put in full possession of the members of the Constituent Assembly of what our criticisms are. I wish the House to remember that the Constituent Assembly is a sovereign body and has got its own rights and privileges and it is competent to draft a constitution without consideration for any-body else. The Madras Legislative Assembly is represented according to its quota in the Constituent Assembly but this House has not got it. Therefore it is more apt that this Council should

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discuss it than even the Assembly, since the Assembly has got its own representatives elected by it while we have not and have merely to be satisfied with that representation in that body."

THE HON. SRI B. GOPALA REDDI:—"Some of the members of this House are also there."

THE HON. DR. T. S. S. RAJAN:—"They have not been elected by us to that body and it was left to the generosity of the party to choose three members from this House and that is why I want that this House should have an opportunity to offer its criticisms; whether it will be fruitful or not is another matter and we would have done our duty in offering criticisms we considered necessary consistent with our duty to the House and country at large."

* SRI B. BHIMA RAO:—"Mr. President, Sir, while speaking 3 p.m. on the resolution moved by Dr. A. Lakshmanaswami Mudaliyar that the Provincial Legislatures should be given an opportunity to offer their views on the Draft Constitution of India before it was finally adopted, I expressed the hope that the Constitution that would be framed would be an ideal one. I now express my sincere pleasure that it is really so and I hope that this House will adopt it in its entirety. I will refer to only three points and I will not take more than twenty minutes.

"The main point in the Draft Constitution is about Fundamental Rights. Two such rights are enunciated in Articles 9 and 23. Article 9 says:

'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.'

Article 23 says:

'(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.'

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.'

I hope the principle underlying these articles will be adhered to by our Government also. As the hon. Members of the House are aware, no communal principle was applied to the admission of students into colleges prior to two years ago."

MR. PRESIDENT:—"I am afraid the hon. Member is criticising the Government instead of criticising the Constitution."

SRI B. BHIMA RAO:—"I am only saying that this Government also should adhere to that principle. I mention this because the Bhoré Committee's Report also lays down that at least one-third of the admissions should be on the basis of merit and that in regard to the remaining two-thirds provincial and other considerations may prevail. Even that recommendation was not heeded

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and the admission on the ground of merit was reduced to twenty per cent in 1946. Even that was given the go-by last year. I sent a short notice question enquiring as to what will be the principle for admission into colleges from the academic year commencing in June 1948. Obviously the Ministers have not made up their minds. They said that they wanted further notice and could not treat it as a short notice question. By the time we meet next, it will be June or July and by then admissions would have been over. Anyhow it is a very good principle and I hope that our Ministry will set aside all communal considerations and adhere to it. I am not pleading for any particular community, because merit is not the sole monopoly of any one community. I am saying this in the interests of all communities. I have got reliable information that a premium, euphemistically called donation, was demanded from a particular community for admission in some colleges in South India. Really, it is a very sad feature which affects our cultural and educational rights. Such a thing should not take place. I place this in the forefront as one of the main safeguards for people of all communities to have a right of admission in educational institutions. I hope this Government will not give rise to the application of Article 25 under which the communities will have to move the Supreme Court for the enforcement of this right."

THE HON. SRI B. GOPALA REDDI:—"Is there discrimination against any community just now?"

* SRI B. BHIMA RAO:—"If a particular community, let it be any community, is given only two seats out of fourteen, is it not discrimination?"

THE HON. SRI B. GOPALA REDDI:—"No. If a community forming three per cent of the population gets two out of fourteen, it is not discrimination."

* SRI B. BHIMA RAO:—"Let us agree to differ. In my humble opinion, it is certainly discrimination. Both of us will have to go to the Supreme Court to decide the issue. Scope should not be given for agitating such a claim in a court of law."

SRI C. N. MUTHURANGA MUDALIYAR:—"On a point of order, Sir. The discussion is being side-tracked and the real purpose of the sitting is not carried out. Unless the Chair puts a stop to this sort of side-tracking, I am afraid the other members also will have to refer to the justice of the Ministry's actions."

MR. PRESIDENT:—"The hon. Member Mr. C. N. Muthuranga Mudaliyar must have heard me saying before he rose up that the hon. Member was criticising the Government instead of criticising the Constitution. I do not want to be hard on senior members of the House and so I give a timely warning. If they do not pay heed to it, I will have to pull them up. I am sure to do it and the hon. Member need not worry about it."

"(Turning to Sri B. Bhima Rao) We are now discussing the Draft Constitution. If the hon. Member Mr. Bhima Rao has any

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suggestion to improve it, it is welcome. If he wants to take this opportunity to criticise the Government, I think he may reserve his speech for the next budget meeting."

* SRI B. BHIMA RAO :—" It was not my object to criticise the Government. I only gave an illustration to show how this important principle, which should be maintained, had been departed from.

" In Article 25, a person has been given the right to move the Supreme Court. It is very difficult for an aggrieved person to go to Delhi and move the Supreme Court, as the expenditure and inconvenience involved would be tremendous. Hence I suggest that provision must be made for moving the matter in the High Court of the respective province.

" One other excellent provision is embodied in Article 20.

' Every religious denomination or any section thereof shall have the right—

(a) *to establish and maintain institutions for religious and and charitable purposes ;*

(b) *to manage its own affairs in matters of religion ;*

(c) *to own and acquire movable and immovable property ; and*

(d) *to administer such property in accordance with law.'*

If I give examples, my hon. Friends misunderstand. It is for the disciples of a church or mutt to administer it under suitable safeguards, and it is not for the Legislature to pass laws relating to such a matter. That is my humble submission.

" Then there is Article 231 relating to Concurrent Subjects. When a Central Act is in force, it has become usual to introduce amendments in the provinces. If there is any lacuna or loophole or anything which requires amendment in a Central Act, it is the duty of the province to ask the Central Legislature to intervene. That is the correct procedure. Hence it is laid down :

' (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law regarding a matter with respect to which Parliament has power to make laws, then subject to the provisions of clause (2) of this article, the law made by Parliament, whether passed before or after the law made by the Legislature of such State or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.'

I think the provision embodies an excellent principle which should be adopted.

" One more observation Sir, I want to make and then I shall close. It is with regard to the constitution of our High Courts Under the Constitution, power is given to the State Legislature

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to pass laws with regard to the constitution of the High Court. Sir, I think, in a matter like that it should be the Parliament that should enact a uniform provision with regard to the constitution of the High Courts, and also with regard to the appointment of High Court Judges. Sir, this is an All-India Constitution and I wish that there should be some provision for the free importation of eminent High Court Judges from outside, and it should not be left to a Province or the Legislature of a State to make provision to have Judges from within the Province only. If there are excellent Judges outside, or in other Provinces within the Indian Dominion, why not we have them? "

THE HON. SRI B. GOPALA REDDI :—" Sir, we should confine ourselves to persons within the Indian Dominion, because under the Constitution he must be a citizen of India according to section 193 (2) of the Draft Constitution. There is no objection to getting people from other Provinces according to this section, Sir."

* SRI B. BHIMA RAO :—" Hitherto Sir, we have been indenting upon the services of eminent members of the English Bar, but now most of them have been sent away. I thought that some provision could have been made for that. But since there is already provision to secure the services of eminent members of the Judicial Service and of the Bar from other Provinces within the All-India Union, I do not press my point, Sir."

* DR. V. K. JOHN :—" Mr. President, Sir, in my opinion the country should be deeply obliged to the Drafting Committee for having produced this Draft Constitution. No doubt, they have, in introducing the various provisions in this Draft Constitution, followed the decisions taken by the Constituent Assembly during their proceedings and by the various Committees appointed by the Constituent Assembly. Nevertheless, Sir, the drafting of a constitution for a country is a very, very difficult task and on going through the various articles of this Draft Constitution, I find that greatest care has been bestowed to the wording and content of the various articles and the public should feel deeply grateful to the eminent members who formed the Drafting Committee.

" Sir, it may be that any criticisms or suggestions which we make for improving the Draft Constitution of India might not have much effect in the present circumstances, but I have still hopes that if on particular points there is a strong and united opinion from the public as well as from the legislature, the Constituent Assembly might reconsider those points and might take advantage of the criticisms offered. It is in that hope and in that spirit that I shall venture to offer a few remarks at present.

" Sir, there are two fundamental characteristics that any good constitution should possess, namely, certainty and flexibility. A constitution if it is overweighted on the side of certainty will never grow and one danger of a written constitution, which we have always to guard against, is that it might lose its flexibility. One great advantage of the constitution which they have in Britain

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is that it is not a written constitution and therefore it is flexible, and conventions have grown up. A written constitution should, in my opinion, be like a skeleton, on which are built the muscles and flesh with a vigorous circulation of blood as in the case of living organism. Everything should grow up by convention. If you take the proceedings of this House, you will find that a far larger number of conventions have grown up for the guidance of its proceedings. It is from that point of view that the draft of a constitution should have to be viewed. And in my opinion the framers of this Draft Constitution have kept this fundamental principle in mind to a very large extent, namely, that they should allow the Constitution to grow and it is with that object in view they have given large powers to the Centre. There are also other reasons, Sir, why the Centre in this country should be very very strong, whatever may be the position of the Provinces. If you have a Centre which is very strong and if the Provinces are also equally strong, then I think, it would be an ideal constitution for a country. The provinces must be then like limbs of a body. But it may not be possible. Considering the fact that in the Indian Union alone we have over three hundred million people—and as we are hoping that Pakistan also will form part of the Indian Union at no very distant date we will have in all 400 million people, a very huge number indeed—there are bound to be disruptive tendencies. There will also be linguistic, cultural, communal and many other divisions which will be disruptive in their tendencies. Therefore, Sir, to have a strong and united Centre is of the greatest importance. One thing I notice in this Constitution is that they have reserved large powers in the hands of the Centre in the distribution of subjects in the legislative list. Sir, there are people who would say that the Provinces should have more power and that the Centre should not encroach upon the Provinces. They might refer to the constitution of other countries not so large and not so overpopulated as this country. In my view, it is quite in order for the Constitution to provide for a very strong and powerful Centre and if we consider how the British themselves were able to rule this country, you will find that it was by keeping a strong Centre and reserving all the powers to themselves and not allowing the Provinces to be disruptive.

“ Having said that, I should also have to say that the Drafting Committee need not have gone into too many details, because, as I said above, we would lose the flexibility of the Constitution. In my opinion the Drafting Committee could have dropped many details in this Constitution and could have given only a skeleton constitution which could grow by convention.

“ Sir, there are two or three matters on which I should like to make observations. Under Article 67 (6) you will find that election to the House of the People shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal

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practice shall be entitled to be registered as a voter at such an election. There is also a similar provision in Article 149 (2), that is for the Legislative Assemblies of the State, the election shall be on the basis of adult suffrage. Now I am decidedly of the opinion that this adult suffrage given to such a large mass of uneducated people not trained how to exercise their votes is not a step in the right direction. How will they properly exercise their vote? "

AN HON. MEMBER :—" But they have enough culture."

DR. V. K. JOHN :—" Anyhow, Sir, I am not certain whether all of them possess enough culture to understand and to discriminate between different points of view. Sir, I think it is a great danger to give adult suffrage or direct vote to each adult. What should have been done, in my opinion, was what Pandit Jawaharlal Nehru has himself written in his book, ' The Discovery of India.' In that book, he wrote that we should have the village as the unit and have the panchayats to return members to the Houses of Legislature and the panchayats must be elected on adult franchise. In that case we could expect a more educated and discriminatory vote cast by the person who is responsible to return candidates to the Assembly. Now we are giving every person a vote indiscriminately. Nowadays things are moving very fast, and as we are seeing before our very eyes, the labourer, the peasant and the uneducated masses are very easily misled by the mob orators and political agitators. We are witnessing strikes all over and all these troubles will only increase when the election is based on adult suffrage and people are asked to return candidates to the legislature on that franchise. Therefore, my decided opinion is, not that every man should not be given a vote, but that every adult should have the vote and that there should be an electoral college or panchayat who will be selected by every adult voter and who in turn will select candidates for the various legislatures both Central and Provincial.

3-30
p.m.

" Another observation which I should like to make is on the administration of justice. Sir, during the last so many years we have borrowed from the West many things but not in the spirit in which those things exist in the West. We have borrowed them and applied them to this country in a manner which is prejudicial to public interests. In the High Court in England a case would normally be over in about six months' time or even earlier. In very few cases—and many cases are decided by judge and jury—there is an appeal on facts. Even if there be an appeal it would be over in about two or three months. The law reports may give us a different impression. In fact the administration of justice in England is quite different from the administration of justice in this country. Here, Sir, if there is a case for less than Rs. 5,000 in the Sub-Court there would be an appeal to the District Judge, then you can appeal to the High Court and with a certificate you can appeal from one judge to two judges under the Letters Patent and thereafter to the Supreme Court and also to the Privy Council, if it exists. It is the experience of many who practise the profession that a litigation is never over even within a period

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of 12 years. Execution of decrees nearly 12 years old, is the rule and not the exception. The result is that delay defeats justice and we are following a system not in the spirit in which it is administered in England but in another way so that there is absolutely no real administration, no equitable or just administration of law in India. What I suggest is that we must go back to our panchayat courts. I suggest that we have a list of 100 or 200 persons in the City who should be available to administer justice, as arbitrators. We know, Sir, that an arbitrator has to give his judgment within four months unless he gets an extension of time from the Court. Now very much depends on the expedition with which a case is decided. What happened in our country before the British came? Disputes were settled by the panchayat courts. Men who knew many things which judges of the present day do not know, administered justice. What I suggest is that the parties to a litigation may be asked to choose three persons out of the list of 200 persons in the City and if they don't agree, they may challenge persons in the list they object to. Both parties may choose three persons from the list and both may agree to the three names or they may have three names not objected to by either. The case will be tried by these three persons and it will be over in about a month or two and there may not be an appeal from findings of fact. Three persons sitting together can certainly be expected to decide according to justice, and in order to guide them on questions of law there might be a reference on questions of law to the High Court. This system of administration of justice by panchayat courts was what we were accustomed to before the British introduced an elaborate system of administration of law. Decision by panchayat courts is in accordance with the genius of our people. Even now we are accustomed to decisions given by arbitrators under the Town-Planning Act and the Tenancy Act, with an appeal to the Chief Judge of the Small Causes Court whose decision is final, and there is not, in my opinion, grave miscarriages of justice. (Sri R. Suryanarayana Rao : Question.) Therefore, Sir, we must go back to our ancient custom and have suits disposed of within about three months by arbitrators without any right of appeal on questions of fact except a reference on question of law to the High Court. I suggest that there should not be any fee collected from the litigants. To-day it is a source of revenue. In my opinion it should not be a source of revenue. Administration of justice is a public responsibility. I am against the practice of following precedents. Decision in every case should be in accordance with justice and good conscience applicable to the facts of that case. There is no rule of precedence in France, in Germany, and other countries on the continent. A rule laid down in one case very often works injustice in another. In England the law developed by the application of precedents. Battalions of law books are ranged on either side to guide or misguide the judges. Very often the same judge feels difficulty to apply to a new case principles laid by him in a previous case. In India the application of precedents has gone too far. A break was put on it in England by Lord Halsbury. In *Quinn vs. Latham*, Lord Halsbury said that the principle laid down

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in one case ought not to be followed in another case by analogy as law is not a logical science. We have copied the British system and not the continental system. Having an intimate knowledge of the administration of justice, being in the profession for many years, I am of opinion that this elaborate system of administration of justice introduced by the British should be thoroughly overhauled. Unfortunately, the Draft Constitution apparently provides the same system of administration of justice which we had when the British were here but I think it is unsuited to the genius of our people, and it will not do justice to litigants as delay defeats justice. What is required is expedition and not delay and no appeal except on a question of law. If three persons decide a case, Sir, there cannot be much injustice and you know that even if the arbitrators make a decision on a question of law and make it wrongly, there need not be an appeal. Therefore I suggest and I strongly plead that our whole system of administration of justice be recast and put back to the old system of decisions by panchayats. I welcome the proviso to Article 191 of the Draft Constitution which is the saving feature in the Draft Constitution.

"I shall pause on only one more point, Sir, and that is the treatment of minorities provided for in Articles 292 and 293 of the Draft Constitution. It is my decided opinion that after the 15th of August 1947 no person should consider himself as a member of a minority community and there should not be any communal organization in the public life of this country."

MR. PRESIDENT:—"What is the article?"

* DR. V. K. JOHN:—"Articles 292 and 293, Sir, in Part XIV. The Draft Constitution has recognized the so-called claims of certain minorities and for ten years they have reservation of seats. But the unfortunate thing is that the reserved seats will no more give representations to minorities because the election is by the minority as well as the majority and therefore the nominee of the majority community alone will be returned. If you should satisfy the minority community surely there will not be any satisfaction by reservation of seats in the manner suggested in the Draft Constitution. It might be asked, why should we have separate electorates. I am also against separate electorates. It might have been better to have a number of candidates selected by the minority community at a preliminary election and later elected by all the communities together. Even that is not provided. Sir, I am against this reservation for minorities, because it will consolidate and sharpen communal consciousness in a free country. We must teach our children that they are Indians first, Indians second and Indians last. That should be our education. That should be our re-orientation in public life. I have suggested many times that all communal organizations in public life whether they are in the political field or in the economic field such as the Muslim Chamber of Commerce and other communal organizations should be liquidated. What I suggest is that if a minority community is to be satisfied if it is not to be apprehensive of the majority community it will be the duty of the State to see that no

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discrimination is made against any man on account of his caste or creed. It is a great responsibility for Governments to-day both at the Centre and in the Provinces to see that no person is discriminated against on account of the community or creed or caste to which he belongs. But no constitution can provide effectively for this. It is for the Government of the country or province. I am glad that a large majority of the Ministers, both at the Centre and in the provinces, to-day are non-communal-minded although I should not say that of all of them. My opinion is that the Constitution need not provide for representation for minorities in the manner it has provided. But there should be a sort of definite understanding or convention or a rule that no man is discriminated against by the Government or by the majority community on account of his caste and creed. All the Ministers and public officers should put their hands on their breasts and see that they never discriminate against any person on account of his caste and creed. I say that that is the atmosphere which the Governments of the country and the public should create. I say to the leaders of the minority communities that it does no good to them if they agitate publicly to redress their grievances because even if they have some grievances, public agitation to redress them will not be of great assistance but might do positive harm.

"I do not think that the provision in the Constitution for the protection of minorities is either sufficient or necessary. Leaders of public opinion should not think themselves to be members of a minority. So also the representatives of the majority community should also not think that they belong to the majority community. They must simply think that they are citizens of India."

MR. PRESIDENT:—"When there is no thinking in terms of a community, where are the grievances?"

* DR. V. K. JOHN:—"The grievances there may be. There may be a Government post. The minority community man may be the best competent and he may have sent in his application but the post might go to somebody else. Therefore I say there should not be any discrimination against him. It is no use ignoring the fact that there are minorities existing in this country. There are different communities in this country and there is communal consciousness. What is required is to efface communalism in public life, and not to sharpen communal consciousness. I don't say that you should ignore it like an ostrich saying that there is no communalism in this country. That would be the worst thing possible because communalism will go underground and there would be discontent and disturbance in the country and perhaps civil war. What I suggest is that the only way to solve the problem is not by providing for separate or joint electorates with reservation but by seeing that men occupying positions in Government are not communal-minded and do not do anything which could be said to be a discrimination against any person on account of his community or creed.

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3-45 P.M. "That is the only way to solve it. I appeal to the minority communities people that they should not organize themselves and create communal consciousness in the minds of the people who are uneducated. Once they do it, they do a great injury to themselves and to the country as a whole. Therefore, while I appeal to the minority communities to liquidate all communal organizations, I ask them to be satisfied with joint electorates. I also appeal to the Government—both the Central and the Provincial Governments—to see that neither they nor their servants do anything which is discriminatory of a particular community. They must be, just as Caesar's wife, above suspicion."

MR. PRESIDENT:—"I take strong objection to the use of the word 'Caesar's wife.' What about others' wives? Do you think that others' wives can be viewed with suspicion?" (Laughter.)

DR. V. K. JOHN:—"It is an old adage, Sir. I do not know why it went to Caesar and not to Brutus.

"Sir, this is my last suggestion. As so many members desire to speak, it is better that I confine my remarks to these points and finish my speech now although one might speak on the Draft Constitution for hours. Thank you, Sir."

* SRI K. NATARAJAN:—"Sir, in this House we had previously a discussion on this Draft Constitution. The Draft Constitution has been before us for a very long time. Therefore, it is not quite necessary on my part or on the part of any of my hon. Friends to discuss this Constitution article by article or section by section. There are certain tests, which had been emphasized by speakers in a previous sitting, to decide as to what must be the essential ingredients of a satisfactory Constitution. The first test is whether this Draft Constitution provides for a strong Centre and whether there is any scope for Provincial autonomy. I am one of those who believe that there should be a strong Centre without the Provincial States being in any way disintegrated. I think that this Constitution has provided both for a strong Centre and autonomy for the States with residuary powers. In the Centre we have got to represent us, both in foreign countries and within the Dominion; a President of India who is to be chosen by an electoral college consisting of Members of both Houses of Parliament as well as of the States, and in whom executive powers of the Union have been vested. He is vested with supreme command of the Defence Forces in India. He is also fortified by a Legislature which is called Parliament consisting of both Houses which are also elected bodies. Therefore, if any foreigner is to ask 'what is the sanction behind the President or the Vice-President for representing this great Dominion', the reply is, 'he has got all the attributes of, viz., a sanction, from, the elected representatives he is armed with full powers, armed with powers over Defence, and he has also the assistance of a Vice-President, who is also an elected gentleman.' Therefore, we have got a strong Centre. It is a strong Centre not only in the sense that the President has got the sanction of

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the people at large, but the first list mentioned in the Seventh Schedule gives ample powers to the Dominion Legislature over all essential matters. There was some discussion as to whether or not the Centre list or the Federal list had been enlarged at the expense of the Provincial or the Concurrent list. One must go through all the three lists and compare them with the lists given in the Government of India Act, 1935, to see whether there is any justification for the complaint that the Centre List or the Federal Legislative List has been enlarged and that many items which were on the State List have been transported to the Centre List. I had some trouble to see side by side both the old Act and the Draft Constitution. So far as the Federal List in this Draft Constitution is concerned, we have got a subdivision of three or four major heads which are found in the old Act of 1935. It is not necessary for me to illustrate this. But one point I may refer to, namely, Dr. Lakshmanaswami Mudaliar when he was speaking on a Resolution on this Draft Constitution threw a doubt whether item 5, List I—Union List—Seventh Schedule, i.e., 'Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war' was not too elastic to rope in everything, and whether it would not be trenching too much upon the State List or Concurrent List. If you look at the industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war in the Union List and also look at item 37 in the State List, i.e., 'Development of industries, subject to the provisions in List I with respect to the development of certain industries under the control of the Union', it will be seen that the expression 'industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war' in the Union List does not deprive the States or Provinces of their facilities to improve and develop industries. One other hon. Gentleman while speaking on the resolution made a reference to income-tax. It was feared that there was no stable proportion between the amount of income-tax that will be collected from the Provinces and the allocations of income-tax allotted to the Provinces. We see that in the Union List in item 84, we have got income-tax coming under taxes on income other than agricultural income. In the State List, we have got in item 51 'taxes on agricultural income.' Whatever may be the contributions which may or may not be paid out of the income derived by the Centre from the Provinces, we have got income-tax on income other than agricultural income in the Union List and income-tax on agricultural income in the State List. These illustrations show that after a little mechanical patience to study and understand whether there is really a deprivation of certain items or transportation of the items from the Concurrent List or State List to the Union List, we would come to the conclusion—subject to correction—that there is nothing taken over by the Centre at the expense of the privileges of the Provinces, and the Provinces have not yielded powers to the Central Legislature. I think that so far as the first point or the first standpoint is concerned, i.e., what are the powers of the Centre, what are the powers of the Provinces, and whether there

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is scope for Provincial Autonomy, this Constitution satisfies that test. (Interruption by Mr. B. Narayanaswami Nayudu.) When you go into both the lists you will see that residuary powers are with the States and they do not go or lapse to the Centre. That is my understanding of the position. There are certain allocations of the subjects in the Central List, State List and the Concurrent List. Is there anything which is not exhausted in the State List or in the Union List, so as to leave anything to be taken to the Centre List? That is a test to be put. I mean that both Provincial Autonomy and Central Government are very well safeguarded. The second point which may be mentioned in this connexion is this. Never mind the Centre and the Provincial Autonomy. What about the State itself? Is the State Government given absolute powers; are the Ministers given absolute powers; are the people given absolute powers? Of course, as far as the Centre is concerned this question will not arise. So far as the Provinces or States are concerned, it is the Governor who wields absolute powers. Therefore, should the Ministers subordinate themselves to the Governor? Suppose a specific question like that as it were, is put to us and we are asked to reply in terms of yes or no. What will be the answer? I may here refer to Article 131 of the Draft Constitution. Before I go to that, I shall mention the position of India under the Montague Act. As you all know there was a specific provision in that Act, namely, the Governor shall be guided by the advice of his Ministers. But that was taken away under the Act of 1935. What took place was instead of saying in the Act that he shall be guided by the advice of his Ministers, the framers of that Act conceded that, by saying, that it is a convention. It is a convention that has grown and they thought that this must be omitted in the Act. This is the answer given by one of the learned Ministers. Sir, under the old instrument of instructions given to the Governors, it was stated that they shall be guided by the advice of the Ministers. In this new Draft Constitution although we do not find the words in the Draft proper that the Governor shall be guided by the advice of Ministers, still we have got such an instrument of instruction in the Appendix to the Fourth Schedule in this Constitution. It says: 'In making appointments to his Council of Ministers the Governor shall use his best endeavours to select his Ministers in the following manner, etc.' Then the third paragraph of the Fourth Schedule says:

'In all matters within the scope of the executive power of the State, save in relation to functions which he is required by or under this Constitution to exercise in his discretion, the Governor shall, in the exercise of the powers conferred upon him, be guided by the advice of his Ministers.'

This is what is also contained in the 1935 Constitution; it is only a change of place that is found in this Constitution. It would have been better if the Montague Act had been followed in this respect where it has been expressly stated that the Governor shall be guided by the advice of the Ministers. Therefore, this section which I have quoted is only a copy of the Act of 1935. Then, in this Constitution, it is said that the Ministers will retain their

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seats during the pleasure of the Governor, the words used suggesting that the Governor can arbitrarily dismiss a Minister who acts against his will. Sir, there may be some functions in which the Governor should respect the wishes of his Ministers. Even though the Constitution makes ample provision for safeguarding the rights of Ministers, yet, on account of the power of dismissal given to the Governor, they will be at the mercy of the Governor. That should not be the case in the present state of things. It may be when a foreign Government was here that Governors were given such a power. Such a possibility of dismissal, may not be very much imminent but at the same time we can conceive of a state of things when some Governor may take it into his head to thwart the wishes of the elected Ministers or the elected representatives of the people. Therefore, it would have been better if the Act or Constitution is so framed that it will not give such arbitrary power to the Governor. I want this Council to give a definite answer to this. Probably the framers of the Draft Constitution accept it.

“Then, Sir, I want to refer to Article 131 of the Draft Constitution. It says:

‘The Governor of a State shall be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State.’

Alternatively.

‘The Governor of a State shall be appointed by the President by warrant under his hand and seal from a panel of four candidates to be elected by the members of the Legislative Assembly of the State, or, where there is a Legislative Council in the State, by all the members of the Legislative Assembly and of the Legislative Council of the State assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot . . .’

Therefore, originally it was intended that the Governor of a State should be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State. But, now it seems that after some discussion in the Constituent Assembly and also in the Select Committees, they put forward this alternative proposal, viz., ‘elected by the members of the Legislative Assembly of the State, or, where there is a Legislative Council in the State by all the members of the Legislative Assembly and of the Legislative Council of the State assembled at a joint meeting.’ It is for you to indicate what will be the better course. Of course, there are arguments for and against that can be advanced. Dr. John has observed that he was not a believer in adult franchise. In the case of some members, this want of belief may not commend itself. But the second alternative may satisfy people who agree with Dr. John. It is for you to state positively whether you take the alternative Article 131 or the original Article 131. It needs some discussion by various

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representatives—members of the Constituent Assembly and also other representatives—and only after discussion by those representatives and after expression of opinion by majority of members by means of definite formulæ or resolutions, that any alternative ought to be adopted. I leave it at that."

MR. PRESIDENT:—"What is the view of the hon. Member?"

* SRI K. NATARAJAN:—"I am in favour of the latter alternative. Though I did not express it, I am in favour of the latter alternative. Because, there may be possible conflicts between the Governor and the Ministers of the State. If the Governor is elected by the Assembly of the State and the Ministers are also elected, then the Governor cannot easily override the Ministers. Sir, I believe that was what happened when the first Congress Government took up office. When the first Congress Government wanted to assume office, they wanted some assurances from the Governor that he would not interfere with the day-to-day administration of the Ministers but would act in consonance with their wishes. That was the reason why the Congress Government did not take up office at that time immediately. Again, there is this thing. The council of Ministers may have the Legislature at their back. The Legislature may have confidence in the Ministers. The Governor may not like the Ministers or the Prime Minister and there may be a clash. Such a clash will be avoided if the latter alternative Article 131 is adopted.

"Then, Sir, I come to my next point, namely, the independence of courts. Of course independence of courts comes in several Articles of this Draft Constitution. There is one Article which indicates that the present Federal Judges will automatically become judges of the Supreme Court. Article 308 says:

'The judges of the Federal Court holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under Article 104 of this Constitution in respect of the judges of Supreme Court.'

Then Article 103 says:

'Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years.'

It also states that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of India shall always be consulted. So, this gives power to the Chief Justice to guide the President in the appointment of other judges. Then there is

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Article 193 which deals with the appointment of High Court Judges. It says :

Every judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years, etc.'

Therefore, Sir, there are hedgings in the power of the President. I have no doubt that the Federal Court Judges will become the judges of the Supreme Court. There will be no difficulty in the first instance. But, afterwards when the appointment of other judges of Supreme Court and judges of the High Courts of the State takes place, although sufficient safeguards are imposed by the Constitution, I think there is one important safeguard which was not thought of at that time, namely, about cases arising before completion of the term of office. There may be cases where the Supreme Court Judge or a High Court Judge does not act properly or does not satisfy the people. No provision is made for that. Article 103 (4) says :

" A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity."

Therefore no President can lightly interfere and remove these judges. At the same time, it shows that he should be pinned down to certain unsatisfactory judges. On the whole however there is ample provision made for the safeguarding of the rights of judges.

" Then, Sir, there is one provision with regard to one small matter. Somehow or other, it seems to have escaped the attention of the members of the Committee. In Article 200, there is a provision made which states that the Chief Justice of a High Court may, at any time, call upon any retired judge to come and act as a judge. In this provision, no reference is made about judges being appointed by the President. It means that the President will recommend to the Chief Justice and the Chief Justice will appoint the person recommended as a judge.

" Then, Sir, the Supreme Court is very mighty. If there are disputes in election to the office of President or Vice-President of the Union, they are matters which have to be decided by the Supreme Court. Therefore, I think, as regards courts, the Constitution, so far as it goes, is satisfactory.

" Then, the next point which I want to refer is this. There is one important thing in this Constitution. There is not a break between the past and present in the matter of judicial administration. Articles 35, 117, 201, 307, clearly lay down that the

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respective powers of the judges in relation to the administration of justice in the courts including any power to make rules, etc., will be the same as immediately before the commencement of this Constitution. Therefore, there is no sudden break of a departure in this Constitution with regard to the powers of the courts. Of course, I do not understand the reference made by Dr. Jinnah to the old arbitrations and panchayats being substituted for courts. It is a very large question. We have to ponder over it and deal with details. A new provision must be made in regard to these arbitrations and panchayats. That is asking for too much just now at the present time when there are so many other pressing things.

"Then, Sir, Chapter IV is an essential portion of the Draft Constitution. It lays down the principles of administration of justice and principles of State policy. The framers of the Constitution have laid down what ought to be the primary aim and concern of everybody in the administration of justice, about legislation and about executive powers of the Union, etc. It is also stated that the State shall endeavour to secure for the citizens a uniformity of Civil Code throughout the territory of India. I believe, it is a very important thing, namely, that there must be legislation, to have that uniformity throughout India.

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"Article 10 says that there shall be equality of opportunity for all citizens in matters of employment under the State. Article 13 says that subject to certain provisions all citizens shall have freedom of speech, association, etc. In clauses (f) and (g) it says that they shall have freedom to acquire, hold and dispose of property and freedom to practice any profession, or to carry on any occupation, trade or business.

"Article 20 says:

'20. Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.'

My hon. Friend Mr. Bhima Rao said that the State should not interfere with the religious institutions even though the management is very very bad. It is a very extreme position. I think except with regard to (c), i.e. 'To own and acquire movable and immovable property' as far as (d) is concerned, it should be the prime concern of the State.

"Article 24 says that 'No person shall be deprived of his property save by authority of law.' Article 25 gives the right to move the Supreme Court by appropriate proceedings. These articles lay down the fundamental rights of the people.

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“ Sir, the above rights are qualified by certain articles. The proviso to Article 8 says :

‘ Provided that nothing in this clause shall prevent the State from making any law for the removal of any inequality, disparity, disadvantage or discrimination arising out of any existing law. ’

The four words used are ‘ inequality, disparity, disadvantage and discrimination ’ and to that extent the general rule may be deviated from in exceptional cases.

“ Article 10 (3) says :

‘ (3) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State. ’

There will be no quarrel about that.

“ Article 13 (5) says :

‘ (5) Nothing in sub-clauses (o), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any aboriginal tribe. ’

“ Sir, the ‘ interests of the general public ’ is a loose term and even judges of ability have often found themselves in a quagmire in interpreting it.

“ This is a good constitution. It has excellent motives behind it. Articles 10, 13, 24 and 25 give us the fundamental rights. We used to talk of the Queen’s Proclamation as our Magna Charta, but these articles are our Magna Charta now. There are of course provisions which restrict and qualify those rights. But they can be restricted only to the extent laid down therein. No Legislature or Governor or President can ride rough-shod over the fundamental rights of the people.

“ Sir, I thank you for having given me a little more time than I expected, considering the short time at the disposal of the House. I do not want to enter into further discussions which may side-track the issue as my hon. Friend Mr. Muthuranga Mudaliyar said. I think my hon. Friends will also draw attention to the points which may be accepted and which may be amended. It may not be, as Dr. Lakshmanaswami Mudaliyar said, this is a permanent constitution intended for our children and children’s children too. But we should not sit idle saying that this is a constitution prepared by experts, able men and patriots. We should also think about the matter leaving aside for the moment our respect for the gentlemen at the top, who have prepared the constitution with great care.”

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MR. PRESIDENT :—“ Any other hon. Member willing to speak now? (After a pause) I am just asking the Hon. the Leader of the House whether we cannot sit till 5, since the party is only at 5-15 p.m.”

THE HON. DR. T. S. S. RAJAN :—“ We can rise at 5 p.m.”

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ Some of us want to go home before going to the party.”

MR. PRESIDENT :—“ Let us go straight from here.”

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ It will be inconvenient, Sir.”

MR. PRESIDENT :—“ Can any hon. Member then finish his speech in 10 to 15 minutes? ”

SRI A. GOVINDACHARYULU :—“ I shall try, Sir.”

MR. PRESIDENT :—“ The hon. Member should promise to finish.”

SRI A. GOVINDACHARYULU :—“ Then I shall have my chance on Monday, Sir.”

SRI M. NARAYANA MENON :—“ I shall speak to-day, Sir. This document contains so many sections and I do not wish to survey all of them now. One of the points on which I expected a proper decision at least at the time of the framing of the constitution is the abolition of untouchability. Article 11 says that “ Untouchability is abolished.” So far so good. It is one of the expectations of my life. But there is one other social evil more crushing than untouchability and that is the caste system. I thought, Sir, that when we changed from servility to freedom, this social servility also would be completely removed. The good fortune which has fallen to untouchability has not come to the caste system! Every now and then in this Council and also in the Assembly references are made to communal discrimination meaning thereby caste discrimination, which has irritated and pained many of us. There is no getting out of this unless the caste system is removed.

“ Sir, another question is with regard to right to property. Section 24 says that “ No person shall be deprived of his property save by authority of law.” In sub-section (2) it is provided that the property may be acquired by the State by the payment of compensation. “ Compensation ” is not defined here. We do not find the word “ adequate ” there. There will be difficulty if the Legislature do not want to pay compensation at all or want to pay only very small compensation.”

MR. PRESIDENT :—“ Peppercorn compensation.”

SRI M. NARAYANA MENON :—“ When such people come to legislate, the people who have to part with land will be very much aggrieved. It is therefore better to say that adequate compensation will be paid. Otherwise, they may pay one rupee for 100 acres of

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land. The word 'Compensation' should be properly qualified by the word 'adequate' in order that justice may be done to people who have to part with land or property or industry.

"Sir, with regard to legislation about landed property, it is found in the concurrent list so that any legislation passed by the Centre may override the legislation of the Province. It is better that, except in small matters, the general legislation regarding property must always be left to the Union and not to the Provinces. The reason is this. It may be that people who have taken a lesson from Russia may come to legislate for us. In such cases, land legislation cannot be safely left to them. I do not object if Communism is introduced in this country if the Union Legislature, the Provincial Legislatures and the people want Communism. Let it come. There is no harm. But before it comes we should not have the evil effects of Communism. This will be avoided if the Centre takes it up. If it is left to the Provinces and the States, there may be very different legislation in regard to property rights and it will affect the harmonious development of society.

"Then, one other small matter, Sir, and that is with regard to the appointment of Governors. My point is this. The State is governed by the people, that is to say, by an elected Cabinet. So far, there is no objection to that and that is what it should be. but when it comes to the point of a Governor who is also elected by the State, the difficulty will be sometimes very much felt; that is, a Governor elected by the people as against a Prime Minister who is also elected and as against a Cabinet which is also elected. Perhaps, the difficulty will not be seen now but will be seen later. To avoid that and to connect the Provinces with the Centre, always it is better that the Governor be appointed by the Centre or by the President and not elected by the Province"

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MR. PRESIDENT:—"What is the idea underlying that suggestion? Does it mean that the Governor can control the Ministers or the Ministers can control the Governor?"

SRI M. NARAYANA MENON:—"There is no absolute control over the Ministry by the Governor. In certain cases, the power of overriding the Cabinet is seen vested in the Governor." (Sri B. Narayanaswami Nayudu: 'He can intrigue'.)

MR. PRESIDENT:—"What is the purpose of that kind of suggestion? What do you want to achieve by that?"

SRI M. NARAYANA MENON:—"When all these people, the Governor and the Prime Minister, are both elected by the Province, they may come in conflict on many points."

MR. PRESIDENT:—"If one is nominated and the other is elected, what will be the position?"

SRI M. NARAYANA MENON:—"The Governor may be appointed by the Centre."

MR. PRESIDENT:—"As between the Governor and the Prime Minister what is the position?"

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SRI M. NARAYANA MENON :—" The position is very difficult now."

MR. PRESIDENT :—" If the Governor is appointed by the Centre and the Prime Minister is elected by the State, what is the relation between the two? How do you avoid conflicts if they should arise? "

SRI M. NARAYANA MENON :—" The Centre can interfere so far as the Governor is concerned. If the President of the Union has got the power to appoint him, the President can also remove him."

MR. PRESIDENT :—" That means to say, the voice of the Prime Minister can be made to prevail even as against the Governor."

SRI M. NARAYANA MENON :—" Yes, only through the President. And, then only in regard to one or two points. There is a section here which says that as far as possible men will not be unequal. That is to say, inequality will be the minimum, which is highly desirable. But, this is not possible and practicable unless you adopt Communism in the strictest sense of the term. Communism that is prevailing in Russia is not one where equality completely prevails. It is the position, no doubt. It is not here. It is not anywhere in the country. Therefore, when inequality should come in, in any administration, to say that inequality shall be as little as possible, is to leave it vague. Let us make it something very definite."

MR. PRESIDENT :—" If I may interrupt you—I suppose you saw the report in the papers the other day that at the Governors' Conference, the Governors were in favour of being appointed by the President and they were not in favour of being elected. Is it not so? I think that was the report. If as you say, the idea is that the elected Prime Minister's voice should prevail through the President of the Union over the Governors, why should the Governors want as a body such a kind of thing? They preferred to be nominated by the Centre than elected by votes."

SRI M. NARAYANA MENON :—" Then, election means internal conflict."

MR. PRESIDENT :—" Then, why did the Governors want a subordinate position? "

SRI M. NARAYANA MENON :—" It is because they probably do not want to be troubled by the Ministry and the people."

MR. PRESIDENT :—" Perhaps, they want to have the upper hand."

SRI M. NARAYANA MENON :—" Yes, that is the reason probably. Thus, regarding the inequality which I was speaking of, it is better to say that a man shall not possess anything more than so many acres of land, or so much extent of money and so on. It is possible to be understood and there is no harm in fixing even

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under the Constitution an acreage or an amount of money which shall be considered sufficient for a single person or for a family. But, to say that the inequality shall not be so much, is to leave the matter vague and that ought not to be left vague. Nothing is going to happen if there is a vague expression of the intentions of the Government in a section like this. But it is better, I think, to fix an amount or an acreage of land or an amount of money which a person may possess, so that future troubles may not arise at the time of litigation.

"Another thing is, whether such a provision as that would interfere with the development of industries in the land? To say that there shall not be inequality or that limited inequality alone can exist—when there is a provision like that—it is difficult for me to see how any industry can be developed. An industrialist, of course, comes in with a desire to amass or to hoard—to use so bad an expression so far as he is concerned—but would he come to work if whatever he earns is to go to the State, leaving only a small margin for him. In such cases as that, it is better to say that no person shall, even by industry, earn or hoard anything more than that. It may also be said for the greater convenience of the State, that all such industries shall be nationalized. You can begin with that, so that a man need not work and then begin to lose and begin to cry, feel and so on. Therefore, it is better that all the industries are nationalized, so that men may not suffer by work.

"I have had to make these observations because the word, 'inequality' is very very inexpressive of the real intentions of the State.

"These are the few matters which I wanted to refer because I have not considered the rest."

MR. PRESIDENT :—"The House will now adjourn and meet again at 5-30 p.m. on Monday, the 26th April 1948."